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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,278	01/19/2001	Charles A. Jennings	404419	9674
27148 7590 06/21/2010 POL SINELLI SHUGHART PC 700 W. 47TH STREET SUITE 1000 KANSAS CITY, MO 64112-1802				
EXAMINER				
BLAIR, DOUGLAS B				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
06/21/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/766,278

Applicant(s)

JENNINGS ET AL.

Examiner

DOUGLAS B. BLAIR

Art Unit

2442

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 and 60-140 is/are pending in the application.
- 4a) Of the above claim(s) 103-106 and 135-140 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-58 and 60-101 is/are allowed.
- 6) ☒ Claim(s) 1-44, 102 and 107-134 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The applicant has amended claims 1, 10, 45, 102, 107, and 130-134 and cancelled claim 59. Claims 1-58, 60-102, and 107-134 are currently pending.

Response to Arguments

With rejections based on 35 USC section 101 has been withdrawn. In the paragraph beginning in line 15 on page 52 of the applicant's specification, the applicant positively defines the stream caster as having hardware components. Because all of the system claims feature the stream caster, they all contain a hardware element and therefore cannot be considered software per se.

With respect to claim 1, the applicant argues that the Examiner incorrectly equated "delivery server 118" with the "stream caster". The Examiner does not agree with this however because the applicant's specification does not provide a limiting definition for the stream caster. The specification gives examples of features that a stream caster might have but it does not limit the definition of the claimed stream caster. Because the delivery server teaches all of the limitations explicitly claimed as being part of the stream caster, the delivery server anticipates the claimed stream caster.

With respect to the rest of the arguments provided by the applicant, they are addressed by revisions to the rejections in this office action. In order to overcome the Wiser reference the applicant needs to be more specific as to what is occurring in each claim limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-44, 102, and 107-134 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,385,596 to Wiser et al.

As to claim 1, Wiser teaches a system for streaming media to a viewer for a request for the media, the system comprising: a stream routing processor (**content manager 112**) executing instructions to: receive reservation data comprising a valid reservation identification (**col. 19, lines 8-10, the content manager would receive both valid and non-valid requests from the delivery server**); and transmit the valid reservation identification (**col. 19, lines 26-32**); and a stream caster (**delivery server 118**) to: receive a reservation identification for the request (**col. 19, lines 4-7**); receive the reservation data identifying the valid reservation identification from the stream routing processor (**col. 19, lines 26-32**); and validate the reservation identification using the valid reservation data (**col. 19, lines 33-43, by retrieving the media the delivery server is "validating" the reservation**); and stream at least partially the media to the viewer when reservation identification is valid (**col. 19, lines 38-43**).

As to claim 10, Wiser teaches a stream routing processor (**content manager**) executing instructions to: receive signaling inquiring if the switch can stream the requested media (**col. 14, lines 52-60**); determine if the switch is configured to stream the requested media (**col. 14, lines**

52-60); and receive reservation data comprising a valid reservation identification when the switch is configured to stream the media (**col. 19, lines 8-10**). As to the rest of claim 10, it is rejected for the same reasons as claim 1.

As to claim 102, Wiser teaches a switch controller to monitor the stream caster (**delivery server**) during streaming and to notify the stream routing processor of a status of the stream caster (**col. 15, lines 1-9, the functionality disclosed in this section reads on the switch controller which is not defined in any limiting fashion by the applicant's specification**). As to the rest of claim 102, it is rejected for the same reasons as claims 1 and 10.

As to claim 107 and 132-134, they are rejected for the same reasoning as claims 1 and 10.

As to claim 130, the delivery server does not send a media file anyway if the reservation is not confirmed by the content manager.

The limitations of the dependent claims are rejected according to the cited embodiment of Wiser and corresponding disclosure related to the cited embodiment. Should the applicant have any questions about a particular limitation, the applicant is invited to telephone the Examiner at the number listed at the conclusion of this office action for clarification.

Allowable Subject Matter

Claims 45-58 and 60-101 are allowed.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Lee can be reached on (571) 272-3967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Primary Examiner, Art Unit 2442